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Notes on the Revenue Act of 1943

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The Revenue Act of 1943 As Affecting Corporations

BY W. H. DAVIDSON

(New York Office)

As in the case of the other Revenue Acts since 1939, the Revenue Act of 1943 is in the form of amendments to the Internal Revenue Code. Except as otherwise noted the amendments apply to taxable years beginning after December 31, 1943. There follows a brief digest of the more important provisions affecting the income and excess profits taxes of corporations.

CORPORATION TAX RATES

The normal and surtax rates on corporations are unchanged. The excess profits tax rate of 90 per cent is increased to 95 per cent. However, the over-all limitation of 80 per cent of the surtax net income is retained.

The specific excess profits tax exemption is increased from $5,000 to $10,000. The excess profits credit with respect to invested capital over $5,000,000 has been reduced. The credit now is computed as follows:

On Portion of Invested Capital	*Rate of Credit*
Not over $5,000,000	8%
$5,000,000 to $10,000,000	6%
Over $10,000,000	5%

FISCAL YEAR CORPORATIONS

In computing the normal tax, surtax, and excess profits tax of corporations with fiscal years beginning in 1943 and ending in 1944, the tax is the sum of (a) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1943, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1944, bears to the total number of days in such taxable year, plus (b) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1944, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1943, bears to the total number of days in such taxable year. This is substantially the method that was in force for taxing fiscal year taxpayers prior to 1934.

The new method is not applicable to insurance companies, regulated investment companies and Western Hemisphere Trade Corporations.

Reorganization of Certain Insolvent Corporations

The new law provides that no gain or loss is recognized by a corporation (other than a railroad corporation) which transfers property to another corporation solely for stock or securities in such other corporation pursuant to a court order in a receivership, or foreclosure proceeding or a proceeding under section 77B or Chapter X of the National Bankruptcy Act. If cash or other property is also received (boot) the amount of gain recognized is limited to the boot and no loss is recognized.

The basis of the property to the acquiring corporation for determining gain or loss, depreciation, or invested capital is the same as the basis in the hands of the transferor increased by any gain recognized to the transferor, and without reduction on account of any cancellation of indebtedness.

The above provisions are retroactive to taxable years beginning after December 31, 1933 but will not affect any tax liability for a taxable year beginning prior to January 1, 1943. For example, if the reorganization occurred in 1934, depreciation, gain or loss and invested capital for years prior to 1943 will be determined as under prior law, but for years beginning on or after January 1, 1943 such items will be determined under the new law with proper adjustment for depreciation, etc., in the intervening years.

Where, in the type of reorganization referred to above, stock or securities in the old corporation are relinquished or extinguished in consideration of the acquisition solely of stock or securities of the new corporation, no gain or loss is recognized by the stockholder or security holder. Where "boot" is received the recognized gain is limited to the "boot," and no loss is recognized. The foregoing provision is retroactive to taxable years beginning after December 31, 1931.

However, if the exchange occurred in a taxable year of the security holder beginning prior to January 1, 1943 and if there was a final determination of the tax of the security holder for such year prior to May 25, 1944, gain or loss will be recognized to the extent that it was recognized in such final determination. According to the Conference Report there is a final determination when any change in the tax liability for the taxable year is prevented by a decision of a court or the Tax Court, or a closing agreement, or the expiration of the period of limitation on refunds or deficiencies.

If there was no such final determination prior to May 25, 1944, gain or loss will be recognized to the extent that it was recognized under the latest treatment of such exchange by the security holder

prior to December 15, 1943 in connection with his tax liability for the year of the exchange. According to the Conference Report, this means the position formally maintained in a return, amended return, claim for refund, proceeding before a court or Board of Tax Appeals, or in some formal action taken in connection with a proposed determination of his tax liability for such taxable year.

Reorganization Prior to September 22, 1938

Under a provision of the new law applicable to taxable years beginning after December 31, 1935, the basis of a corporation's property is not affected by the cancellation of indebtedness, where a plan of reorganization approved by the court in a 77B proceeding is consummated without the transfer of assets to another corporation, and a final judgment or decree was entered in such proceeding prior to September 22, 1938.

Election as to Recognition of Gain in Certain Corporate Liquidations

The 1938 law, under certain circumstances, permitted the liquidation of corporations in December, 1938, without immediate recognition of all the gain to the stockholders. The new law contains a similar provision.

If the requirements of the law are met, and an individual stockholder so elects, the amount of gain on the liquidation is first determined in the usual way. The portion of the gain which does not exceed his share of the corporation's earnings accumulated after March 1, 1913 is taxable as a dividend. If the portion of the assets received by him consisting of money, or stock or securities acquired by the corporation after December 10, 1943, does not exceed his share of such earnings the balance of the gain is not recognized. If such money and securities exceed his share of such earnings the balance of the gain is recognized to the extent of such excess and is taxable as short-term or long-term capital gain, depending upon his holding period for his stock.

If the shareholder is a corporation holding less than 50 per cent of the combined voting power of stock entitled to vote on the liquidation, the gain is recognized only to the extent of the greater of (a) the portion of the assets received by it consisting of money or stock or securities acquired by the liquidating corporation after December 10, 1943; or (b) its share of the earnings of the liquidating corporation accumulated after March 1, 1913. Such gain is all long-term or short-term capital gain.

It is apparent that the new provision is designed to benefit stockholders of corporations which have substantial unrealized appreciation, including good will.

The tax basis to any electing shareholder of property received by him in the liquidation will be the basis of his canceled stock, decreased by any money received and increased by any gain recognized to him.

The plan of liquidation must be adopted after February 25, 1944 and the liquidation must occur within one calendar month in 1944. The new provision applies to stockholders with taxable years ending after December 31, 1943.

Written election by the liquidating corporation or by the shareholders must be filed within thirty days after the adoption of the plan of liquidation.

Acquisitions Made to Evade or Avoid Income or Excess Profits Tax

In order to prevent certain tax avoidance transactions, the new law disallows deductions, credits or allowances secured through such plans. The provision applies when (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation when it must use the transferer's basis for such property, if in either case the principal purpose of the acquisition is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy.

The provision does not apply when a corporation acquires property of another corporation controlled by the acquiring corporation or its stockholders, the Conference Committee being of the opinion that tax avoidance in such cases could be prevented under section 45 of the existing Code.

In cases falling under the new provision, the Commissioner is authorized to allow deductions or credits in part or to allocate income, deductions or credits among corporations or properties.

The Senate Finance Committee stated that the purpose of the new provision was to prevent tax avoidance particularly of the type represented by the recently developed practice of corporations with large excess profits (or the interests controlling such corporations) acquiring corporations with current, past, or prospective losses or deductions, deficits, or current or unused excess profits credits, for the purpose of reducing income and excess profits taxes.

The provision is applicable only to taxable years beginning after December 31, 1943, but the law specifically states that in determining the law applicable to prior years no inferences should be drawn from the fact that the amendment is not expressly made applicable to prior taxable years, the determina-

tion for prior years to be made as if the amendment had not been enacted.

Credit for Foreign Taxes

The 1942 law contained a serious inequity in the limitation on the credit for foreign taxes as a result of which a corporation using the invested capital method for computing its excess profits tax did not secure an adequate credit for foreign taxes paid with respect to foreign dividends. This defect has been remedied.

The limiting ratio on the credit for foreign taxes against the normal tax and surtax is now that proportion of the tax which the normal-tax net income from foreign sources bears to the entire normal-tax net income. The normal-tax net income from foreign sources is the net income from such sources minus a proportionate part of the credit for income subject to excess profits tax. The credit for income subject to excess profits tax (ordinarily the adjusted excess profits net income) is allocated to income from foreign sources in the ratio that the excess profits net income from foreign sources bears to the entire excess profits net income. This amendment is applicable to taxable years beginning after December 31, 1941.

There is a further amendment applicable to taxable years beginning after December 31, 1939 to permit a credit against the excess profits tax for foreign taxes paid by a foreign subsidiary from which dividends are received. Prior law allowed such credit only against the normal tax and surtax.

Percentage Depletion

Percentage depletion at the rate of 15 per cent of the gross income from the property is extended to flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, barite and potash mines or deposits. The amendment regarding flake graphite is retroactive to taxable years beginning after December 31, 1942. The allowance for the other products is for taxable years beginning after December 31, 1943. Except for potash these allowances will terminate after the end of the war.

The new law for the first time contains a definition of "gross income from the property," retroactive to taxable years beginning after December 31, 1931. It provides that the term means gross income from "mining" and defines "mining" to include not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied in order to obtain the commercially marketable mineral product.

Gain or Loss Upon the Cutting of Timber

Under the new law, if a taxpayer so elects, and has owned timber (or a contract right to cut timber) for

more than six months prior to the beginning of the taxable year, the timber cutting, whether for sale or for use in the taxpayer's business, is treated as a sale of the timber and the gain or loss is measured by the difference between the depletion basis of the timber and the fair market value of the timber at the beginning of the year in which such timber is cut. This provision is apparently not retroactive.

In the case of a disposal of timber held for more than six months under any type of contract where the owner retains an economic interest in the timber (such as so-called cutting contracts) the difference between the depletion basis of the timber and the amount received for the timber is treated as a gain or loss upon the sale of the timber, retroactive to all taxable years.

For taxable years beginning after December 31, 1941 the gain or loss referred to in the preceding paragraph is included with the gains or losses upon sales or exchanges of depreciable and real property used in the trade or business and held for more than six months (including involuntary conversions) and if there is a net gain it is capital gain and if a net loss it is an ordinary loss. The gain or loss referred to in the second preceding paragraph is similarly treated but apparently only for years beginning after December 31, 1943.

Nontaxable Income from Mining and Timber Operations and from Natural Gas Properties

The 1942 law exempted from excess profits tax certain income from excess output of mines and timber blocks, determined by the relation of the output in the taxable years to that of the "base period." The new law extends the exemption to natural gas companies, and to lessors of mineral property or a timber block, with respect to taxable years beginning after December 31, 1941. For taxable years beginning after December 31, 1943, the new law also exempts income from excess output of a coal mining or iron mining property or a timber block which was not in operation during the base period in an amount equal to one-sixth of the net income from the property for the taxable year.

Publicity of Relief Under Section 722

The Commissioner is required to make public for each governmental fiscal year beginning after June 30, 1941 the cases in which relief has been granted under section 722, including the name of the taxpayer, the amount of relief claimed and the amount allowed.

Post-War Refund of Excess Profits Tax

Under prior law the post-war credit bonds could not be trans-

ferred before the end of the war. This provision interfered with many proposed liquidations and reorganizations. To permit such transactions, the new law permits the transfer of the bonds to a "successor," defined as "such person or persons who succeed, either directly or through one or more persons, to ownership of property of the taxpayer, as the Secretary may by regulations prescribe." This amendment applies to taxable years beginning after December 31, 1941.

Deduction of Federal Excise Taxes

The new law prohibits the deduction of federal import duties and federal excise and stamp taxes as "taxes." However, they may be deducted as expenses, or as cost of goods sold.

Last-In First-Out Inventories

The 1942 law granted certain relief to taxpayers which adopted the last-in first-out inventory method and as a result of war conditions were unable to keep an inventory of normal size and consequently part of the inventory which was frozen at a comparatively low cost was disposed of in the highest tax years. The 1942 law granted such relief for taxable years beginning after December 31, 1941 but the new law allows the same relief in the case of taxable years beginning after December 31, 1940 if the taxpayer so elects within six months after February 25, 1944, the date of the enactment of the 1943 law.

Partially Worthless Bad Debts

Prior to the 1942 law the Code permitted the deduction of a partially worthless bad debt in an amount not in excess of the part charged off within the taxable year. The 1942 law limited the deduction to the part which became worthless within the taxable year, and the amendment was retroactive to taxable years beginning after December 31, 1938. The new law retroactively restores the provision as it read before the 1942 amendment.

Returns by Organizations Exempt from Taxation

For taxable years beginning after December 31, 1942 exempt organizations (with certain exceptions) must file annual returns stating items of gross income, receipts, and disbursements and such other information as may be prescribed by regulations. With certain restrictions, the law exempts from the above provision religious, educational and charitable organizations and fraternal beneficiary societies.

Right to Exclude Certain Corporations from Consolidated Returns

Among the corporations exempted from excess profits tax under prior law are personal service corporations, personal holding

companies, certain domestic corporations deriving 95 per cent of their income from foreign sources, and certain corporations subject to the provisions of Title IV of the Civil Aeronautics Act of 1938. However, under prior law if such corporations were members of an affiliated group which filed a consolidated return their income was fully taxable.

Under the new law such corporations are excluded from consolidated income and excess profits tax returns and they are exempt from excess profits tax, unless the corporation files a consent to be included in a consolidated return for the taxable year or any prior taxable year beginning after December 31, 1943.

Credit for Debt Retirement

In the case of taxable years beginning after September 1, 1942, the limit on the credit against excess profits tax for debt retirement was 40 per cent of the amount by which the smallest amount of debt during the period beginning September 1, 1942 and ending with the close of the preceding year exceeded the debt as of the close of the taxable year. Under a retroactive amendment the limit is now 40 per cent of the amount by which the lesser of (1) the debt as of September 1, 1942, or (2) the smallest amount of debt as of the close of any preceding taxable year ending after September 1, 1942 exceeds the debt as of the close of the taxable year.

For taxable years ended before February 25, 1944, corporations may elect within 90 days after that date to take any additional credit it may be entitled to under the above amendment.

Post-War Refunds for Fiscal Years Beginning in 1941 and Ending After June 30, 1942

In the case of fiscal years beginning in 1941 and ending after June 30, 1942 a tentative excess profits tax was computed under the law applicable to 1941 and another tentative tax was computed at the rates in the 1942 law. The excess profits tax was the sum of a portion of each tax, depending upon the number of days in the fiscal year before and after June 30, 1942.

The post-war refund was 10 per cent of the difference between the excess profits tax as finally computed and what the excess profits tax would have been under the law applicable to 1941. A retroactive amendment allows as post-war refund 10 per cent of the portion of the tentative tax computed at the 1942 rates.

Dividends Paid on Preferred Stock of Public Utilities

The 1942 law allowed certain public utility corporations a credit against the surtax net income for

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The Revenue Act of 1943 As Affecting Individuals

By Philip Bardes

(New York Office)

Except for the reduction of the rate of the victory tax and the repeal of the so-called windfall tax, the Revenue Act of 1943 makes no changes in the rates of the income tax imposed on individuals. It does, however, make a number of changes that affect the determination of the net income of individuals subject to tax and the penalties imposed for noncompliance with the requirements under the pay-as-you-go system for reporting and paying the estimated tax. Those changes deemed to be of general interest and not affecting corporations are noted in this article. Except where otherwise indicated such changes are applicable only to taxable years beginning after December 31, 1943. Certain of the changes made by the Revenue Act of 1943 affecting individuals also affect corporations. Such changes are not covered in this article, the more important ones being digested elsewhere in this issue of the Journal in the article entitled "The Revenue Act of 1943 as Affecting Corporations."

Repeal of the Windfall Tax

The so-called windfall tax imposed by the Current Tax Payment Act of 1943 on certain individuals whose income had increased as compared with their prewar income has been repealed. This tax was discussed under Increase (C) and Increase (D) in the article on the "Current Tax Payment Act of 1943" in the L. R. B. & M. Journal for June, 1943.

Penalties in Connection with Estimated Tax

The Current Tax Payment Act of 1943 imposed penalties for noncompliance with the requirements under the pay-as-you-go system for reporting and paying the estimated tax. The new law somewhat reduces the severity of the penalties and grants immunity in certain circumstances from the penalty imposed for a substantial underestimate of the estimated tax. Thus, no penalty is imposed if the estimated tax is less than 80 per cent of the final tax (66⅔ per cent in the case of farmers) provided payment is made within or before each quarter (not including quarters beginning prior to July 1, 1943) of an estimated tax at least as great as though computed on the basis of the facts shown on the taxpayer's return for the preceding taxable

year except as his status with respect to personal exemption and credit for dependents may have changed. The changes made by the new law are applicable with respect to taxable years beginning after December 31, 1942.

Denial of Deduction for Federal Excise Taxes When Not Deductible as Expenses

Federal import duties, federal excise taxes and federal stamp taxes are now nondeductible, except as they may be deductible as expenses under Section 23(a) of the Code, or as a part of the cost of goods sold.

Determination of Status for Purpose of Personal Exemption and Credit for Dependents

The prior law required that the personal exemption and the credit for dependents be apportioned where a change of status occurred during the taxable year. The new law eliminates the requirement of apportionment, the taxpayer's status on July 1 of the taxable year determining the personal exemption and credit for dependents to which he is entitled for that year. In the case of a short taxable year that does not include July 1, it is his status on the last day of the taxable year that controls.

Reduction of Personal Exemption and Credit for Dependents in Case of Short Taxable Year

The prior law required that where a return was made for a short taxable year (other than on account of a change of accounting period) the personal exemption and credit for dependents be reduced. The new law entitles a taxpayer making a return for a short taxable year to the full exemption and credit, the only exception being where the short taxable year results from the closing of the taxable year by the Commissioner because the tax is in jeopardy. Decedents are the principal beneficiaries of the change effected by the new law. It entitles a decedent to the full personal exemption and credit for dependents in his return for the year in which death occurred, with no reduction for the portion of the year during which he was not alive.

Reduction of Rate of Victory Tax and Repeal of Credits

The new law reduces the rate of the victory tax from 5 per cent to 3 per cent and repeals the provision which allowed a credit against the victory tax, depending on the taxpayer's marital relationship and dependents, the effect of which credit was to reduce the tax payable to approximately 3 per cent for most taxpayers. Under the new law a flat victory tax of 3 per

cent is imposed regardless of marital relationship or dependents. There is no change in the specific exemption allowed in computing the victory tax net income subject to the victory tax, viz, $624 for an individual filing a separate return and $1,248 for husband and wife filing a joint return, except that if one of the spouses filing a joint return has victory tax net income of less than $624, the specific exemption is $624 plus the victory tax net income of such spouse.

Repeal of Earned Income Credit

The credit for earned income formerly allowed in computing the normal tax has been repealed. The effect upon the amount of the tax is slight, since the maximum reduction in tax resulting from the credit was $84.

Fiscal Year Taxpayers

In the case of individuals with fiscal years beginning in 1943 and ending in 1944 the changes made by the new law are effective for the portion of such years coming after December 31, 1943. The normal tax, surtax and victory tax of such taxpayers is the sum of:

(a) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1943, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1944, bears to the total number of days in such taxable year, plus

(b) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1944 were applicable to such taxable year, which the number of days in such taxable year after December 31, 1943, bears to the total number of days in such taxable year.

The foregoing requirement is similar to that imposed by the Revenue Act of 1942 upon taxpayers with fiscal years beginning in 1941 and ending after June 30, 1942.

Disallowance of Certain Deductions Attributable to Business Operated at a Loss

The amount deductible by an individual for losses attributable to a business operated by him at a loss of more than $50,000 in each of five consecutive taxable years is limited under the new law. If the deductions (other than taxes and interest) attributable to the business have in each of five consecutive taxable years exceeded by more than $50,000 the gross income derived from such business, the deductions (other than the net operating loss deduction) attributable to such business in each of the five years are allowable only to the extent of $50,000 plus the gross income derived from the business, and the net operating loss deduction is disallowed.

The new law is applicable to taxable years beginning after December 31, 1939 but does not affect the tax liability for any taxable

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The Renegotiation Act as Amended by the Revenue Act of 1943

AND

Repricing of War Contracts

BY ALVIN R. JENNINGS

Even the most casual reader of the newspaper reports on the progress of the Revenue Act of 1943 through the Ways and Means Committee of the House and the Senate Finance Committee is doubtless aware of the sharp differences of opinion which developed between the Administration and the representatives of the military services on the one hand and Congress on the other hand regarding the merits of the various proposals advanced for amending the Renegotiation Act. Incidentally, the Act, which from inception, has been officially known as "Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942" has, by amendment, been rechristened and is now known by the much more workable title of the "Renegotiation Act."

The Revenue Act of 1943, as finally passed by Congress, contains both amendments to the Renegotiation Act and the Internal Revenue Code in Title VII (Section 701) and a new statutory provision relating to the repricing of war contracts in Title VIII (Sections 801 and 802). The more important of the new provisions are discussed in this article.

Scope of Renegotiation Act

"DEPARTMENTS" INCLUDED

The Renegotiation Act (sometimes referred to herein as the Act) is applicable to contracts with the following "Departments" of the Government:

War Department
Navy Department
Treasury Department
Maritime Commission
War Shipping Administration
Defense Plant Corporation
Metals Reserve Company
Defense Supplies Corporation
Rubber Reserve Company

The Departments listed, with the exception of the War Shipping Administration, were all included in the Act as previously amended. Although the War Shipping Administration was not previously defined in the Act as a Department, contracts with that agency were designated as renegotiable by an executive order issued in 1943. The head of each Department is by definition its "Secretary."

DEFINITION OF TERM "SUBCONTRACT"

The definition of a subcontract has been revised, effective with respect to taxable years ending after June 30, 1943, so as to exclude purchase orders or agreements to furnish office supplies. The effect of the amendment is to remove subcontracts of the type described from the purview of the Act. In certain respects later discussed, the exclusion is to be distinguished from the statutory exemptions included in the Act as amended.

EXEMPTIONS

The Act as amended provides certain statutory exemptions and empowers the War Contracts Price Adjustment Board (a newly created administrative board described later herein) to authorize further exemptions under certain specified circumstances.

The statutory exemptions apply to:

1. Any contract by a Department with any other Department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State or any agency thereof or with any foreign government or any agency thereof.
2. Any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use.
3. Any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term agricultural commodity includes but is not limited to:
   (a) Commodities resulting from the cultivation of the soil, such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugar cane, and sugar beets.
   (b) Natural resins, saps and gums of trees.
   (c) Animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream.
4. Any contract or subcontract with an organization exempt from taxation under Section 101(6) of the Internal Revenue Code.
5. Any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility.
6. Any subcontract, directly or indirectly under a contract or subcontract which in turn is exempt.

Exemptions 1 and 2 in the foregoing summarization were likewise exempt under the Act prior to its most recent amendment. The remaining exemptions were added to the statute by Section 701 of the Revenue Act of 1943. Exemptions

3, 4 and 6 are retroactive to April 28, 1942, the effective date of the first Renegotiation Act. Exemption 5 is effective with respect to taxable years ending after June 30, 1943. Exemption 6 was added to clarify the status of contracts of the type stated under prior law. The War Contracts Price Adjustment Board previously referred to is authorized by the Act to interpret and apply all of the foregoing exemptions.

Additional exemptions from some or all of the provisions of the Act may be made at the discretion of the War Contracts Price Adjustment Board with respect to:

1. Any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska.

2. Any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of 30 days.

3. Any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits.

4. Any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices.

5. Any contract or subcontract, if in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price.

6. Any subcontract or group of subcontracts not otherwise exempt, if in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The discretionary powers granted the Board in connection with Items 1 through 3 were, under prior law, vested in the Secretaries of the Departments concerned. The three other discretionary exemptions which, if made, would be effective only as to fiscal years ending after June 30, 1943, are newly added to the statute. The term "standard commercial article" used in the fourth exemption listed in the discretionary group is defined by the Act as an article:

(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," or which is sold at a price not in excess of the January 1, 1941 selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under paragraphs (A) and (B) is considered as identical in every material respect with the article with which it is compared. The definition is subject to interpretation and application by the War Contracts Price Adjustment Board.

It will be noted that the test of the existence of effective competitive conditions is common to discretionary exemptions 4 and 5. In principle, these two exemptions are similar. It is conceivable that contracts for the making or furnishing of articles which cannot meet the definition of a "standard commercial article" but which otherwise would meet the conditions specified in exemption 4 may possibly be qualified under the fifth exemption.

It will be observed that both the statutory and the discretionary exemptions which have been listed apply to contracts. In addition, Section 701 of the Revenue Act of 1943 increases the specific "dollars of business" exemption contained in the preceding Act from $100,000 to $500,000.

As amended, the Act provides, with respect to contractors or subcontractors other than the so-called war contract brokers, that if the aggregate of the amounts received or accrued in any taxable year ending after June 30, 1943 (including amounts received or accrued by persons under control of or controlling or under common control with the contractor or subcontractor) do not exceed $500,000, such amounts are exempt from renegotiation. In computing the limitation of $500,000, amounts received or accrued in the taxable period on contracts or subcontracts exempted under the Act (either by statutory exemption or by the Board under its discretionary powers) must be included. It would appear that amounts derived by a subcontractor from any purchase order or agreement to furnish office supplies need not be included in determining the aforesaid amount of $500,000, since such purchase orders or agreements are excluded by the Act from the

definition of subcontracts to which the Act applies.

If Congress had made the dollar exemption applicable to the "first $500,000 of renegotiable business" it might have avoided the possible temptation of contractors whose Government business approximates, but is less than, the stated $500,000, to decrease productive efforts for the sole purpose of avoiding the accumulation of that additional amount of business which would deprive them of the exemption.

The corresponding specific dollar exemption applicable to contracts of so-called war contract brokers remains in the amount of $25,000 specified by prior law.

If in computing the specific dollar exemption the contractor is dealing with a taxable year of less than twelve months, the specified exemptions must be reduced proportionately.

Statutory Time Limitations

As amended, the Act provides that no proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the taxable year in which such excessive profits were received or accrued or more than one year after the filing with the Board of certain financial statements (later discussed herein) whichever is later. If timely proceedings are not instituted, all liabilities of the contractor or subcontractor for excessive profits received or accrued during the taxable year are discharged. If proceedings are commenced and if an agreement or order determining the amount of excessive profits is not made within one year following the commencement of such proceedings, all liabilities of the contractor or subcontractor for excessive profits with respect to which the proceeding was instituted, are likewise discharged. If an order determining an amount of excessive profits has been made, the one year limitation does not apply to any review of such order made by the Board pursuant to the Act. The one year period of limitation may be extended by mutual consent of the Board and the contractor.

Prior to the most recent amendment, the Act provided for the termination of renegotiation three years after the termination of the war. By amendment, the termination date has been established as December 31, 1944 except that if the President, not later than December 31, 1944, finds and by proclamation declares that competitive conditions have not been restored, the President may specify a termination date, not later than June 30, 1945 in his proclamation. In such case, if the President, not later than June 30, 1945, finds and by proclamation declares that competitive conditions have been restored as of any date within six months prior to the issuance of

such proclamation, the termination date becomes the date as of which the President in such proclamation declares that competitive conditions have been restored. In no event is the termination date to extend beyond the date of termination of hostilities in the present war as proclaimed by the President or in a concurrent resolution of the two Houses of Congress.

Determination of Excessive Profits

The prior Act merely defined "excessive profits" as any amount of a contract or subcontract price which is found as a result of renegotiation to represent excessive profits, without specifying any standards or prescribing any procedures under which the determinations were to be made. As amended, the Act provides that the following factors shall be given consideration in determining excessive profits:

1. Efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities and manpower.

2. Reasonableness of cost and profits, with particular regard to volume of production, normal pre-war earnings, and comparison of war and peacetime products.

3. Amount and source of public and private capital employed and net worth.

4. Extent of risk assumed, including the risk incident to reasonable pricing policies.

5. Nature and extent of contribution to the war effort, including inventive and development contribution and cooperation with the Government and other contractors in supplying technical assistance.

6. Character of business, including complexity of manufacturing technique, character and extent of subcontracting and rate of turn-over.

7. Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

Whenever the Board makes a determination with respect to the amount of excessive profits, whether such determination is made by order or in agreement with the contractor, the Board, at the request of the contractor, shall prepare and furnish the contractor with a statement of such determination, of the facts used as the basis therefor, and of its reasons for such determination. Unless the contractor or subcontractor requests otherwise, the determination of excessive profits will be made on the basis of aggregating all amounts received or accrued rather than by considering the results of individual contracts or subcontracts.

Allowable Costs

As was the case under the prior Act, costs will continue to be determined in accordance with the methods of cost accounting regu-

larly employed by the contractor in keeping his books unless, in the opinion of the Board, such methods do not properly reflect costs, in which case appropriate revisions will be made. Items which are regarded by the Board as unreasonable or not properly chargeable to government contracts will not be allowed. However, notwithstanding that qualification, all items "estimated to be allowable" as deductions and exclusions under Chapters 1 and 2E of the Internal Revenue Code (excluding taxes measured by income) shall be allowed as items of cost to the extent allocable to government contracts. Under no circumstances shall any amount be allowed as an item of cost by reason of the application of a carry-over or carry-back.

The Internal Revenue Code provides, in connection with the amortization of emergency facilities, that if the emergency period ends prior to the expiration of the amortization period of sixty months the deduction for amortization may be recomputed by the use of a shorter period. The prior Renegotiation Act contained no provision which, in such cases, would permit appropriate rebate to the contractor of amounts of excessive profits which may have been computed on the basis of amortizing the facilities over the full sixty month period. The Act as amended provides that the appropriate rebate be made to the contractor in those cases where the deduction for the amortization of emergency facilities is recomputed under the Code. The amendment is effective in respect to all renegotiation determinations whether made prior to the enactment of the 1943 amendments or thereafter, and without regard to whether the proceedings terminated in an agreement or in a unilateral determination.

It will be recalled that among the statutory exemptions which previously have been listed are contracts or subcontracts for the products of mines or certain other stated natural resources which had not been processed beyond the first form or state suitable for industrial use, and for certain raw agricultural commodities. By amendment which is made retroactive to April 28, 1942, the Act now provides that the Board shall prescribe such regulations as may be necessary to make a substantially equivalent cost allowance to contractors who further process the products of natural resources or agricultural commodities produced or acquired by them. The general effect of this amendment is to place processing contractors in a position substantially equivalent, so far as exemption is concerned, with contractors who produce and dispose of such products or commodities without processing.

Tax Credits to be Applied in Computing Refunds of Excessive Profits

FEDERAL TAXES

The Revenue Act of 1942 added Code Section 3806 authorizing the crediting against refunds of excessive profits of the amounts of any federal taxes paid thereon by the contractor under Chapters 1, 2A, 2D and 2E of the Code, or, respectively, normal income and surtax, personal holding company tax, unjust enrichment tax and excess profits tax. Apparently by oversight no credit was authorized for the declared value excess-profits tax levied under Chapter 2B. The Revenue Act of 1943 amends Code Section 3806 so as to include any tax paid under Chapter 2B among those for which appropriate credit will be given.

Section 3806 has also been amended to include provisions affecting unincorporated contractors for 1942 and 1943, necessitated by the forgiveness of 75 per cent of one year's tax liability under the Current Tax Payment Act.

STATE TAXES

The question of credits for state taxes based on income, which taxes may have been paid by contractors on profits deemed to be excessive, was left unanswered by the Revenue Act of 1942. The Revenue Act of 1943, as one of the amendments to the Renegotiation Act, provides that state taxes which are measured by income of the contractor are not allowable as items of cost, but that in determining the amount of excessive profits which are to be eliminated "proper adjustment is to be made for the portion of the taxes so excluded which relate to that part of the contractor's profits which are not regarded as excessive."

The Senate Finance Committee report contains a computation of the amount of credit to be allowed for state tax. The report states: "For example, if the amount due on a contract is $1,000 and the cost is $800, the profit before adjustment is $200. Suppose that of the $200 profit, $90 is considered excessive before adjustment of the State tax. If in such case the State income tax on the remaining $110 is $11, then the $11 is to be applied against the $90, reducing to $79 the amount of excessive profit to be eliminated." The effect of the provision, as interpreted by the quoted example, is that contractors will be given a credit for state income taxes applicable to the nonexcessive profits, but no credit for the state income taxes applicable to excessive profits. This result is the reverse of that accomplished by the credit for federal taxes, which is computed on the excessive, rather than the nonexcessive profits.

Administrative Procedures

The Act provides for the creation

of a War Contracts Price Adjustment Board, to be comprised of six members. One such member is to represent the War Department, one the Navy, one the Treasury, one the Maritime Commission or the War Shipping Administration (presumably jointly), one the Reconstruction Finance Corporation and one the War Production Board. The newly created Board inherits the powers and obligations formerly vested in the Secretaries of the Departments with which the Act was concerned. The Board may delegate its powers, functions and duties to the Secretaries, who in turn may redelegate these as they see fit.

Until regulations have been issued by the Board, the manner in which it will administer the Act will not be known. One possibility is that the Board, as such, may limit its primary functions to consideration and establishment of policies and to reviews of determinations made by its duly constituted functionaries. Since most of the Departments with which the Act is concerned have price adjustment boards already established and functioning, it is possible that the War Contracts Price Adjustment Board may allow such departmental boards to continue to make determinations.

Determinations made by any officer, agency or division of the Board are subject to its review. Such review may be instituted by the Board of its own accord or may be made upon the request of a contractor. Unless the Board initiates a review of a determination of excessive profits within sixty days from the date when such determination was made or, in the event that a request for review has been made by a contractor, within sixty days from the date of such request, the determination of excessive profits is to be deemed the determination of the Board. Contractors desiring to request Board reviews must do so within sixty days from the date of the initial determination. If a review is undertaken by the Board, it may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board representative whose action is under review.

Beginning with the first taxable year ending after June 30, 1943, every contractor or subcontractor who is subject to the Act is under obligation to file "a financial statement" with the Board. The form and content of such financial statement is to be prescribed by the Board by regulation. The statement must be filed on or before the first day of the fourth month following the close of the taxable year. In the case of those contractors having fiscal years ended after June 30, 1943 but prior to February 25, 1944 (the enactment date of the Revenue Act of 1943), the first report is due on or before

June 1, 1944. The Board also has the power to prescribe and require the submission of any other information, records or data which it may determine to be necessary in order to exercise its function. The Act provides penalties of not more than $10,000 or imprisonment for not more than two years or both for conviction of willful failure or refusal to furnish information requested or for furnishing any information which is known to be false or misleading in any material respect.

Right of Appeal

The Act provides that any contractor or subcontractor aggrieved by an order of the Board in determining the amount of excessive profits, may petition The Tax Court of the United States for a redetermination. The petition must be filed within ninety days after the mailing by the Board or its agent of notice to the contractor of the amount of excessive profits which it has determined. It should be noted that redeterminations made by the Tax Court pursuant to petitions filed by contractors are not in the nature of reviews of the determinations of the War Contracts Price Adjustment Board, but are regarded as proceedings de novo. In its determination, the Tax Court may find the amount of excessive profits to be either less than, equal to, or greater than the amount determined by the Board. The Act provides that the determinations of the Tax Court are final, and are not reviewable by any court or agency.

Any contractor or subcontractor (excluding so-called war contract brokers) aggrieved by a determination which was made by the Secretary of a Department prior to February 25, 1944, the date of enactment of the Revenue Act of 1943, with respect to a taxable year ended before July 1, 1943, if the contractor has not agreed to the determination, may also file a petition with The Tax Court of the United States for redetermination. Such petition must be filed within ninety days after February 25, 1944. This provision of the Act refers to those cases in which unilateral determinations were made, and the contractor or subcontractor who has agreed to a determination made in respect to a taxable year ended before July 1, 1943 has no right of petition to the Tax Court. Similarly, any contractor or subcontractor (excluding the so-called war contract brokers) who may be aggrieved by a unilateral determination of the Secretary of a Department made on or after February 25, 1944 and with respect to a taxable year ended before July 1, 1943, may file a petition with the Tax Court within ninety days after the date of the determination. The court, in making redeterminations of excessive profits in respect to years ended before July 1, 1943

cannot give consideration to the amendments to the Act made by the Revenue Act of 1943 other than those amendments which, by such Revenue Act, are made applicable as of April 28, 1942.

Repricing of War Contracts

The objective of contract renegotiation legislation is the elimination of excessive profits *realized* or *likely to be realized*. The elimination of excessive profits already received or accrued to the credit of contractors is accomplished by refunds to the government. The attempt to eliminate profits likely to be realized takes the form of requiring contractors to reduce prices of future shipments. Prior to the enactment of the Revenue Act of 1943, the provisions applying to both the recapture and the repricing functions were included in one section. This was likewise true of the Revenue Bill of 1943 passed by the House, in which the repricing provisions were contained in Section 403(f). However, by a Senate amendment the repricing provisions were divorced from the Renegotiation Act and incorporated as Sections 801 and 802 of the Revenue Act of 1943. The Conference Report states that the separation was made in the interest of clarity.

Under the terms of the Renegotiation Act prior to its amendment by the Revenue Act of 1943, and under the proposed amendments in the House Bill, it would appear that contracts which were exempt from renegotiation were also exempt from repricing. However, Section 801 of the Revenue Act contains no reference to the exemption of contracts which are exempt under the Renegotiation Act, as amended, and it would therefore appear that under the repricing provision the Secretaries of the various Departments may now have the power to require repricing of articles furnished under contracts which are exempt from renegotiation.

In general, Section 801 provides that when the Secretary of a Department deems the price of an article or service required or furnished in connection with the performance of any contract with his Department or any subcontract thereunder to be unreasonable or unfair, the Secretary may require the person furnishing or offering to furnish such article or service to negotiate to fix a fair and reasonable price therefor. If the contractor refuses to agree to a new price which the Secretary considers fair and reasonable, the Secretary may by order fix the price payable for the article or service. Any such order would be applicable to articles or services furnished after the effective date of the order. A Secretary may delegate his powers.

Any person aggrieved by a repricing order may sue the United States in any appropriate court to

recover the amount of any difference between a fair and just compensation for the article or services furnished and the price fixed by the order for such article or services. However, if it should be found as a result of such suit that the prices fixed by the Secretary in his order exceed the fair and just compensation for the articles or services, such person becomes liable to the United States for the amount of such excess. Any suit of this character must be brought within six months after the date of the order or after the expiration of the period or periods which may be specified in such order, whichever last occurs. The entry of suit does not operate to stay the order.

The term "person" includes a corporation. If any person willfully refuses or willfully fails to furnish articles or services at the price fixed by a repricing order, the President has the power to take immediate possession of and to operate the plant or plants of such person.

Section 801 became effective on February 25, 1944, the date of the enactment of the Revenue Act of 1943. Under Section 802, Section 801 will not apply to any contract or subcontract made after the date proclaimed by the President as the date of termination of hostilities in the present war or the date specified in a concurrent resolution of the two houses of congress as the date of such termination, whichever is the earlier.

The Revenue Act of 1943 As Affecting Corporations

(*Continued from page 8*)

dividends paid on preferred stock issued prior to October 1, 1942. The new law disallows the credit with respect to dividends accumulated in any taxable year ending prior to October 1, 1942. Under certain circumstances the new law treats as stock issued prior to October 1, 1942, stock issued on or after that date to replace securities issued prior to that date.

The 80 per cent over-all limitation is based upon surtax net income. The new law contains a provision designed to prevent any reduction in excess profits tax on account of the credit against surtax net income for dividends paid on public utility preferred stocks.

Capital Gains and Declared Value Excess-Profits Tax

The alternative tax of 25 per cent on the excess of net long-term capital gain over a net short-term capital loss is extended to include the declared value excess-profits tax, as well as the normal tax, surtax and personal holding company tax covered by prior law; that is, only one tax at the rate of 25 per cent will be payable for taxable years beginning after December 31, 1943.

TIME FOR FILING REFUND CLAIMS

Under the new law, for taxable years beginning after December 31, 1923, if a taxpayer has filed a Consent extending the statutory period for assessment he may file a claim for refund at any time within six months after the expiration of the Consent. However, if the taxable year begins prior to January 1, 1942 the above provision applies only if on or at some time after February 25, 1944 the period for assessment is open only on account of a Consent having been filed.

The Revenue Act of 1943 As Affecting Individuals

(*Continued from page 11*)

year beginning prior to January 1, 1944.

TRUSTS FOR MAINTENANCE OR SUPPORT OF CERTAIN BENEFICIARIES

Income of a trust may not under the new law be taxed to the grantor merely because the income, in the discretion of another person, the trustee or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary whom the grantor is legally obligated to support or maintain, except to the extent such income is so applied or distributed. The new law repudiates the rule laid down by the U. S. Supreme Court in *Helvering v. Stuart*, 317 U. S. 154, where all the income of such trust was held taxable to the grantor irrespective of the extent to which it was applied or distributed for the support or maintenance of the beneficiary.

The new law is applicable to taxable years beginning after December 31, 1942, except where a taxable year of the trust beginning in 1942 ends within a taxable year of the grantor beginning in 1943. However, in that case and in cases where it is desired to have the new law apply to taxable years beginning before January 1, 1943, the grantor may elect to have it apply to such years by filing consents with the Commissioner.

After the decision in the *Stuart* case the Commissioner announced that the rule laid down in that case would in general be applied only to taxable years of grantors ending after December 31, 1942. It therefore behooves grantors having taxable years beginning in 1942 and ending in 1943 as well as those making a return for the calendar year 1943 where a taxable year of the trust beginning in 1942 ends in 1943 to elect to have the new law apply to such years if they would avoid the rule laid down in the *Stuart* case. Indeed, all grantors affected by that rule should consider the advisability of electing to have the new law apply to all prior taxable years for which the statute of limitations on the assessment of additional taxes has not expired.

The L. R. B. & M. Journal

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The purpose of this journal is to communicate to every member of the staff and office plans and accomplishments of the firm; to provide a medium for the exchange of suggestions and ideas for improvement; to encourage and maintain a proper spirit of cooperation and interest, and to help in the solution of common problems.

The Latest Revenue Act

The 1943 Revenue Act — so named, though it was enacted in February 1944—caused almost as much excitement as that revenue legislation of long ago which led up to the historic Boston Tea Party. It is said to have been the first time that a major piece of revenue legislation was vetoed by a president. Evidently, no matter how much the Congress has tended during the past decade to subordinate its powers to the executive—thus disturbing the balance of our tripartite form of Government—Congress is still jealous of its right to control the purse strings with the complementary right to determine how the necessary revenue shall be raised.

The latest revenue act, which consists primarily of amendments to the Internal Revenue Code, is unsatisfactory because of the differing philosophies of the Treasury (supported by the President) and of the Congress. Broadly speaking,

the Treasury is still committed to the "soak the rich" philosophy. Congress, on the other hand, appears to have recognized the revenue producing limitations, if not the fallacies, of this demagogic philosophy.

The Treasury is apparently unwilling to recognize the necessity of resorting to a sales tax in the present emergency (even though it be undesirable in normal times) if a really substantial amount of additional revenue is to be raised, and the Congress seems unwilling to take the responsibility of initiating such a tax, presumably because of its possibly undesirable political reactions. Hence, this latest revenue measure with its relatively small contribution to the amount of taxes to be raised during the war period.

The estimated revenue to be raised under the provisions of this Act are from the following principal sources:

Excise taxes: increased rates on luxury items, communications, transportation, etc.	$1,051,300,000
Corporation excess profits tax: rate increased from 90 to 95 per cent and invested capital credit lowered	502,100,000
Individual income taxes: earned income credit eliminated and certain other adjustments	664,900,000
Postal revenues: increased rates	96,900,000
	$2,315,200,000

Quite a number of amendments of the Internal Revenue Code are included in the 1943 Revenue Act, the purpose of which was not the raising of revenue but the elimination of inequities or the granting of relief in various cases of undue hardship which would result from the application of various provisions of the Code. Desirable as these amendments may be in principle, their effect is to add to the complexity of our present federal taxing laws.

The Renegotiation Act, as amended by the Revenue Act of 1943, includes a number of new provisions. Because of their importance, an article devoted particularly to that subject appears elsewhere in this issue.

The problem of tax simplification is still with us. As this issue of the L. R. B. & M. JOURNAL goes to press, the newspapers report that the House Ways and Means Committee is starting work on simplification of certain features of the present tax law. The following are mentioned as being among the major aims of a "streamliner" bill to be introduced in the House shortly by the Ways and Means Committee:

1. Integration of the victory, normal and surtaxes into one overall tax, with the present tax burdens continued, so far as possible, unchanged.

2. Elimination of returns by taxpayers where withholding has fully discharged their tax liability.

(*Continued on page 28*)

Notes

The following members of the L. R. B. & M. organization have entered the armed forces of our country since the publication of the November, 1943 Issue of the L. R. B. & M. JOURNAL:

Atlanta
H. Talcott Stith, Jr.

Detroit
John Yackso

Los Angeles
Paul A. Stauffer
Eric J. Stenholm

Philadelphia
Gordon W. Gerber
Paul J. Hentz
Thomas S. Isaacs
Dominic J. Morris

Rockford
Bruce N. Bevington

As at January 1, 1944, 284 members of the L. R. B. & M. organization (exclusive of the London office) were in the service of the armed forces of the United States and six members of the London office were in military service.

It is with deep sympathy that we announce the death of Captain Henry K. Emerson who was killed in action in the Marshalls on February 7, 1944. Captain Emerson, who was 28 years of age was inducted into the Army in February 1942 from Army Reserves. He was a graduate of the University of California, Los Angeles (1938) and of Harvard Graduate School of Business Administration (1940) and joined the staff of our Los Angeles office November 1, 1940. He will be missed greatly by the members of our Los Angeles office who enjoyed so much working with him and had looked forward to his return at the cessation of hostilities.

Thus a second gold star is added to the service flag of the L. R. B. & M. organization.

With deep sorrow we report the death on January 26 of Norman B. Chandler of the Boston office. Since December, 1942, Norman had been on leave of absence because of illness. He is survived by his wife and two sons, one now in the Army and the other a student at Harvard.

Following his graduation from Harvard College in 1917, Norman served for five years in this country and abroad as lieutenant and captain of infantry in the Regular Army. He joined the staff of the Boston office in 1926. He became a supervisor in 1934 and directed a variety of engagements, although much of his time was spent on public utility work. As a straightforward thinker and as an efficient, considerate organizer of his professional engagements, he had both

the respect and affection of those who worked with him. He will be greatly missed by all the members of the Boston office, by numerous clients and by his many other friends.

At a dinner meeting of the New York City Control of the Controllers Institute of America, which was held at the Shelton Hotel on January 18th, Mr. Staub spoke on "Some Wartime Problems in the Presentation of Financial Statements." A discussion period followed. The talk is to be published in the March issue of *The Controller*.

The following day Mr. Staub was in Rochester, N. Y. where he was the guest of honor at a luncheon given by the local chapter of the New York State Society of Certified Public Accountants at the University Club, and the speaker at a joint dinner meeting at the Sagamore Hotel of the Rochester chapters of the National Association of Cost Accountants, the New York State Society of Certified Public Accountants and the Robert Morris Associates. The Rochester chapter of the New York State Society of Certified Public Accountants had been organized during the time Mr. Staub was president of the Society.

Mr. Mark E. Richardson of our Philadelphia office has been exceedingly active on speaking engagements. On November 18, 1943 he appeared before the Philadelphia Chapter of N.A.C.A., his subject being "Current Tax Problems"; in December 1943 his subject before the Bank and Trust Company Tax Association was "Current Tax Problems of Estates and Trusts"; during January he spoke before the Philadelphia Control of Controllers' Institute on the subject "The Pending Revenue Bill of 1943" and before the Industrial Economists' Discussion Group of Temple University on the subject of "The Problems of Federal Taxation of Corporations."

Mr. H. E. Bischoff of the New York office read a paper before the Pace Alumni Association on February 29, 1944 on the subject "Some Observations with Reference to the Federal Income and Excess Profits Tax Laws."

Editorials

(*Continued from page 26*)

So much has been said in the past about tax simplification, and so little done about it, that one can but resort to that old saying, "we shall see what we shall see."

Be Kind to the Tax Man

Be kind to the tax man,
His troubles are grave,
He slaves day and evening
Your taxes to save.

For if Franklin D. Roosevelt
And Henry the Morgue,
The House and the Senate
Are lost in a fog,
Howen 'ell can the tax man,
Who reads the same law,
Come back with an answer
That hasn't a flaw?

When next you approach him
Don't fuss, fret and stew;
Be kind to the tax man,
He has to live too.

—*Bish.*

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